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09/884,638	06/19/2001	Thomas E. Ricciardelli	2601.102	4310

7590

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EXAMINER

TRAN A, PHI DIEU N

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,638

Applicant(s)

RICCIARDELLI, THOMAS E.

Examiner

Phi D A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 line 4, "surface a distal" is indefinite. Should it be "surface, a distal"?

Claim 20 line 3 "boards a wood" is indefinite. Should it be "boards and a wood floor"?

**PRODUCT BY PROCESS CLAIM:**

"The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. The presence of process limitations on product claims, which product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. In re Stephen 145 USPQ 656 (CCPA 1965). It is the general practice of this office to examine the final product described regardless of the method provided by the applicant."

The above policy applies to claim 14.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-4, 8-12, 20-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Oh et al (0039781).

Figures 1, 4c-4d, 8, 10

3. Claims 13-16, 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Oh et al (0039781).

Oh et al shows a decorative layer (figure 10, 103/200) attached to the top surface of the base, a war-resistant layer (104) adhered to the top surface of the base, a wear-resistant layer (104) attached to the decorative layer (103/200), the decorative layer simulates the surface of a wooden floor (figure 8), a plurality of longitudinally extending parallel grooves (figure 4a-4b) on the top surface to simulate a plurality of boards (inherently so as they come together a gap still shown), each of the grooves being aligned with longitudinal edge portions of oppositely aligned step edges (figure 10).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-7, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al (0039781) in view of Ruppel et al (6035928).

Oh et al shows all the claimed limitations except for the interlock surface comprising a hermaphroditic interlock structures.

Ruppel et al shows an interlock surface comprising a hermaphroditic interlock structures.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Oh et al to show the interlock surface comprising a hermaphroditic interlock structures because a hermaphroditic interlock structure is functionally equivalent to Oh et al's tongue and groove structure as they both function the same to interlock the tile together.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al (0039781).

Oh et al discloses the material being plastic.

Oh et al does not disclose the material being recycled plastic.

It would have been obvious to one having ordinary skill in the art to show Oh et al's plastic being recycled plastic because using recycled plastic would ensure cheap and available material for the tile.

7. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al (0039781).

Oh et al shows all the claimed limitations except for the decorative layer on said top surface simulating a wood grain in each tile section.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Oh et al to show the decorative layer (104) simulating a wood grain in each tile section because it was known in the art that providing a decorative surface simulating a wood grain in each tile section would provide a pleasing appearance.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different tile designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Phi Dieu Tran A  
June 27, 2002